WR Grace

SR00000567

Bankruptcy Form 10

Index Sheet

Claim Number: 00009558

Receive Date: 03/28/2003

Multiple Claim Reference

Claim Number _____

- ☐ MMPOC Medical Monitoring Claim Form
- ☐ PDPOC Property Damage
- ☐ NAPO Non-Asbestos Claim Form
- ☐ Amended

Claim Number _____

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- ☐ PDPOC Property Damage
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- ☐ Amended

Attorney Information

Firm Number: 00324

Firm Name: McDermott Will & Emery

Attorney Number: 00200

Attorney Name: Gregg R Hague

Zip Code: 60606

Cover Letter Location Number: SR00000567

Attachments Medical Monitoring	Attachments Property Damage	Non-Asbestos
☐ TBD	☐ TBD	☒ Other Attachments
☐ TBD	☐ TBD	
☐ TBD	☐ TBD	
☐ TBD	☐ TBD	
☐ TBD	☐ TBD	
	☐ Other Attachments	

Other

- ☐ Non-Standard Form
- ☐ Amended
- ☐ Post-Deadline Postmark Date

FORM B10 (Official Form 10) (4/98)
*FILE ORIGINAL FOR CHAPTERS 7 and 11, IN DUPLICATE FOR CHAPTER 13, FOR DATE-STAMPED COPY, SEE #9 BELOW

United States Bankruptcy Court
FOR THE DISTRICT OF DELAWARE

___CH 7 ___CH 13 X CH 11
PLEASE CHECK CHAPTER

Name of Debtor **W.R. GRACE & CO.—CONN.,** | Case Number **01-01179 (JKF)**

PROOF OF CLAIM

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

File Claim Form With:

Name of Creditor (The person or entity to whom the debtor owes money or property) **Robertson-Ceco Corporation**

☐ Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.

Name and Addresses Where Notices Should be Sent
Robertson-Ceco Corporation
c/o Gregg R. Hague, Esq.
Sperling & Slater
55 West Monroe
Chicago, IL 60603
Telephone: 312-641-3200

☒ Check box if you have never received any notices from the bankruptcy court in this case.

☐ Check box if the address differs from the address on the envelope sent to you by the court.

THIS SPACE IS FOR COURT USE ONLY

Account or other number by which creditor identifies debtor:

Check here if this claim:
☐ amends ☐ replaces a previously filed claim, dated: _____

1. BASIS FOR CLAIM:

☐ Goods sold ☐ Services performed
☐ Money loaned ☐ Personal injury/wrongful death
☐ Taxes ☒ Other **Please See Attached Addendum**
☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)

☐ Wages, salaries, and compensations (Fill out below)
Your social security number _____
Unpaid compensations for services performed
from _____ (date) to _____ (date)

2. DATE DEBT WAS INCURRED: **Please See Attached Addendum**

3. IF COURT JUDGMENT, DATE OBTAINED: **See Attached Addendum**

4. Total Amount of Claim at Time Case Filed: $ **Unliquidated–Please See Attached Addendum**
If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Secured claim
☐ Check this box if your claim is secured by collateral (including a right of setoff).
Brief Description of Collateral:
☐ Real Estate
☐ Motor Vehicle
☐ Other _____
Value of collateral: $_____
Amount of arrearage and other charges at time case filed included in secured claim above, if any: $ _____

5. Unsecured Priority Claim
☐ Check this box if you have an unsecured priority claim
Amount entitled to priority $_____
Specify the priority of the claim:
☐ Wages, salaries or commissions (up to $4,300), *earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier-11 U.S.C. § 507(a)(3)
☐ Contributions to an employee benefit plan-11 U.S.C. § 507(a)(4)
☐ Up to $1,950* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use – 11 U.S.C. § 507(a)(6)
☐ Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7)
☐ Taxes or penalties owed to governmental units 11 U.S.C. § 507(a)(8)
☐ Other—Specify applicable paragraph of 11 U.S.C. § 507(a)_____
*Amounts are subject to adjustment on 4/1/98 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.

7. CREDITS: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.
8. SUPPORTING DOCUMENTS: *Attach copies of supporting documents*, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. ANY ATTACHMENT MUST BE 8-1/2" BY 11" **Please See Attached Addendum**
9. DATE-STAMPED COPY: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and an additional copy of this proof of claim.

THIS SPACE IS FOR COURT USE ONLY

Date: **03/27/2003**

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any)

Mohsin N. Khambati on behalf of Robertson-Ceco Corporation

WR Grace BF.39.156.7777
00009558
SR=567

Penalty for presenting fraudulent claim: Fine of up to $500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

REC'D MAR 2 8 2003

CHI99 4088327-1.037101.0031

ADDENDUM TO PROOF OF CLAIM

Robertson-Ceco Corporation ("Robertson-Ceco"), successor to H.H. Robertson Company ("H.H. Robertson") hereby submits this addendum (the "Addendum"), which is filed herewith, incorporated into, and deemed a part of its proof of claim (the "Proof of Claim") against W.R. Grace & Co.-Conn. ("Grace-Conn." or the "Debtor"), and in support thereof states as follows:

A. Background

1. On April 2, 2001 (the "Petition Date"), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code, 11 U.S.C. §§101-1330 (the "Bankruptcy Code"). The Bankruptcy Court has set a bar date of March 31, 2003 for creditors asserting pre-Petition Date claims against the Debtor. Robertson-Ceco has and hereby asserts a contribution claim against the Debtor as a result of being sued with the Debtor and its subsidiaries in litigation relating to asbestos or asbestos containing products by individuals asserting personal injury arising out of or resulting from exposure to or use of asbestos or asbestos containing products.

2. To date, Robertson-Ceco has been named as a defendant by tens of thousands[1] of claimants alleging various theories of liability relating to Robertson-Ceco's attenuated ties to asbestos. Currently, it is believed that more than 45,000[2] claimants have

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[1] Robertson-Ceco continues to receive information on a daily basis regarding additional filings naming it as a defendant as well as information regarding resolution of actions. Further complicating the matter, certain states, including Mississippi, allow either unlimited or excessively large joinder of plaintiffs in a single lawsuit, and plaintiffs are often added after filing of the suits but without proper service. In addition, several cases appear to include spouses and other relatives as separate plaintiffs. As things stand then, it may not be possible to have completely accurate information regarding the total number of past and pending claims against Robertson-Ceco.

[2] As of the date of this Proof of Claim, there were an estimated 45,000 known claimants alleging asbestos-related claims and damages against Robertson-Ceco.

cases pending or threatened against Robertson-Ceco in sixteen jurisdictions, including Alabama, California, Florida, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, North Dakota, Ohio, Pennsylvania, Tennessee, and West Virginia.

3. The large number of cases against Robertson-Ceco mirrors the trend in asbestos litigation generally across the country. Indeed, in recent years the number of asbestos cases filed against Robertson-Ceco has risen dramatically. This increase has been particularly acute for most "secondary" or "peripheral" defendants like Robertson-Ceco. As primary manufacturers and distributors of asbestos and asbestos-containing products like Grace-Conn. North American Refractories, US Gypsum, National Gypsum Company, Owens Corning, Pittsburgh Corning, The Johns-Manville Co., G-I Holdings, and Armstrong World Industries, Inc. filed for bankruptcy, the automatic stay has forced plaintiffs' lawyers to look elsewhere to collect on their claims. Plaintiffs' lawyers have now located and begun litigating against secondary companies who have attenuated links, at best, with the manufacturing, distribution, or use of asbestos but who, more importantly, have survived the earlier waves of asbestos litigation.[3]

4. Robertson-Ceco has neither mined, manufactured, marketed, nor sold asbestos as an independent finished product. H.H. Robertson manufactured and sold a product for use as insulated roofing and siding for large commercial buildings. The product consisted of a felt liner that was fused into a steel core by means of molten zinc,

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[3] Credit Suisse First Boston, *Asbestos: The Dust Assassin Cries Out for Tort Reform* (Nov. 28, 2000); Paul M. Sherer, *New Credit Aids Federal-Mogul in Asbestos Battle*, Wall ST.J., Jan 4, 2001 at A10 (observing that "[p]laintiffs' attorneys have become more aggressive targeting companies with even passing links to asbestos"); *see also Asbestos Litigation in the U.S.: A New Look at an Old Issue,* The RAND Institute for Civil Justice, at p. 33, August 2001. These articles strongly suggest that the only real criterion in getting sued by asbestos claimants these days is the strength of a company's balance sheets.

saturated with asphalt, and coated with several compounds. The product was created such that the felt liner formed a permanent bond with the steel core and was totally encapsulated by layers of coating that were subsequently applied. H.H. Robertson did not actively produce and market the product until the late 1940s, and stopped manufacturing the product altogether in 1981.

5. Significantly, H.H. Robertson did not produce the felt liner, which contained asbestos particles. Rather, H.H. Robertson purchased the felt liner from prominent third-party asbestos producers at the time, including G-I Holdings and The Johns-Manville Company.

B. Robertson-Ceco's Contribution Claim

6. Typically, and regardless of who produced what, plaintiffs' lawyers lump together a large number of companies directly or indirectly linked to asbestos in a single lawsuit. As a result, Robertson-Ceco has been named as a co-defendant in a number of lawsuits brought against the original manufacturers of asbestos or asbestos-containing products, such as Grace-Conn. or its subsidiaries,[4] against entities with workplaces found to contain significant quantities of asbestos, or against successor entities created for the sole purpose of resolving asbestos claims.

7. Plaintiffs' lawyers typically allege any number of theories of liability against the asbestos defendants, including negligence, fraudulent misrepresentation or concealment, conspiracy, and strict liability. In most instances, plaintiffs' lawyers seek

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[4] *See, for example, Hutchinson v. A.H. Voss Company,* No. SCV-306445 (Sup.Ct.Ca. 1999); *Romero v. Acands, Inc.*, No. SCV-315375 (Sup.Ct.Ca. 2000); *Yandell v. A.P. Green Services, Inc.*, No. SCV-303255 (Sup.Ct.Ca. 1999); *Murphy v. ABB Lummus Global, Inc.*, No. SCV-316145 (Sup.Ct.Ca. 2000).

large compensatory and punitive damages in addition to reimbursement for attorneys' fees and all expenses.

8. Robertson-Ceco believes that the claims alleged against it are without merit. Because its product completely encapsulated the asbestos in the felt-liner, Robertson-Ceco believes that plaintiffs were never exposed to asbestos in its product and, as a result, plaintiffs have suffered no injury or asbestos-related impairment due to Robertson-Ceco's products. Indeed, there appears to be no basis for lumping together most of the defendants commonly found in asbestos litigation in a single lawsuit other than to increase the plaintiffs' lawyers' odds at recovery.

9. Plaintiffs' lawyers typically allege that asbestos products are friable and, also that asbestos fibers easily drift over a sizeable area exposing and harming the plaintiffs. As such, even if a defendant such as Grace-Conn. or its subsidiaries are alleged to be primarily responsible for a plaintiff's condition, the other defendants, including Robertson-Ceco, are brought into the lawsuit by virtue of having attenuated ties to products containing asbestos--exposure to which has allegedly exacerbated the particular plaintiff's injuries.

10. The "friable"/"fiber-drift" theory, which might easily have applied to Grace-Conn. hardly applies to Robertson-Ceco, however, since plaintiffs were not exposed to asbestos in Robertson-Ceco's products in the first instance due to the materials that encapsulate the felt liner found in Robertson-Ceco's product.

11. Therefore, to the extent that any monies have been or will be paid by or on behalf of Robertson-Ceco, as a result of being an actual or prospective co-defendant along with Grace-Conn. and any of its present or former subsidiaries, by settlement or otherwise,

to parties alleging asbestos-related claims, Robertson-Ceco reserves its right to seek contribution from the Debtor for any liquidated amounts paid to such plaintiffs.

Reservation of Other Claims and Rights

12. In addition to the foregoing, Robertson-Ceco expressly reserves its rights, remedies, defenses, interests, priorities, protections, and claims against the Debtor under the Bankruptcy Code and any other applicable law.

13. Robertson-Ceco reserves the right to seek an estimation of its claim and/or amend or supplement this Proof of Claim in order to, among other things, assert a liquidated claim against the Debtor, and to file additional claims against the Debtor for any reason whatsoever. The filing of any such amendment and/or supplement shall date back to the filing of this Proof of Claim.

14.. The filing of this Proof of Claim is not and shall not be construed as (1) an election of remedy; (2) a waiver of jury trial rights; or (3) a waiver or limitation of any right, interest, or cause of action held by Robertson-Ceco.

15. Robertson-Ceco further reserves any and all rights against parties other than the Debtor based on the foregoing facts and circumstances.

A Partnership Including
Professional Corporations
227 West Monroe Street
Chicago, IL 60606-5096
312-372-2000
Facsimile 312-984-7700
www.mwe.com

Boston
Chicago
London
Los Angeles
Miami
Munich
New York
Orange County
Silicon Valley
Washington, D.C.

McDERMOTT, WILL & EMERY

March 27, 2003

VIA FEDEX

Rust Consulting, Inc.
Claims Processing Agent
201 S. Lyndale Avenue
Faribault, MN 55021

Re: Proof of Claim form filed in *In re W.R. Grace & Co. at al.*, Case No. 01-01139, filed and pending in the United States Bankruptcy Court for the District of Delaware

To whom it may concern:

Enclosed is an original and three copies of a proof of claim form, each with an attached addendum, to be filed in *In re W.R. Grace & Co. at al.*, Bankruptcy Case No. 01-01139, currently pending in the United States Bankruptcy Court for the District of Delaware. Also enclosed is a stamped, self-addressed envelope. Please file the original proof of claim form with the attachments, keeping any required copies, and send back any remaining file-stamped copies in the enclosed envelope for our records. Please feel free to contact me at 312-984-6888 or mkhambati@mwe.com if you have any questions or concerns in this matter. I appreciate your assistance.

Sincerely,

Mohsin N. Khambati

Attachment
cc: Stanley H. Meadows, Esq.
Bruce Sperling, Esq.
Steven P. Handler, Esq.
Todd R. Wiener, Esq.
Gregg R. Hague, Esq.
Benson K. Friedman, Esq.

REC'D MAR 2 8 2003